

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID WILKINS,
JOHN NICHOLS, JIM FREDRICKS
and
KEITH KETCHER

Application 09/560,665



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on July 13, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

An examination of the Image File Wrapper (IFW) reveals that appellants filed an Appeal Brief on December 1, 2005. In response, an Examiner's Answer was mailed on February 24, 2006.

Section § 1207.02 of the Manual of Patent Examining Procedure (MPEP) (8th Ed., Rev. 3, August 2005) states:

Requirements for Examiner's Answer

The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

(8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

It is noted that while the Examiner's Answer states that "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal" [page 3 under the caption "Evidence Relied Upon"], the claim rejection is listed as follows:

1. Claims 1, 2, 4-7, 9-12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polk (US 5,946,669) in view of Single Parent Central (www.singleparentcentral.com, retrieved from Internet Archive Wayback Machine <www.archive.org>, date range: 10/13/1999-1/19/2000).

Correction is required.

In addition, Information Disclosure Statements (IDSs) were filed on November 24, 2004 and March 30, 2005. It is not apparent from the record whether the examiner considered the statements submitted or notified appellants regarding why their submissions did not meet the criteria set forth in 37 CFR §§1.97 and 1.98. A communication notifying appellants of the Primary Examiner's decision is required. This deficiency was previously noted in the ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER mailed October 3, 2005.


Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) for submission of a revised Examiner's Answer which corrects the "Evidence Relied Upon" section;
- 2) for consideration of the IDSs filed November 24, 2004 and March 30, 2005, as well as appropriate notification to appellants regarding the Primary Examiner's decision; and

3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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